

## REMARKS

The Office Action mailed August 26, 2005, has been carefully considered. The present Amendment is intended to be a complete response thereto and to place the case in condition for allowance.

Claims 1-19 are pending. Claims 4 and 15 have been cancelled. Claims 1 and 9 have been amended to include all the limitations of claims 4 and 15 as originally filed, respectively.

### THE CLAIMS ARE NOT ANTICIPATED

Claims 1, 3, 5-9, and 14-19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by EP 474992 (EP '992). Claims 1, 3, 8-9, and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Ethington, Jr. et al. (U.S. Patent No. 6,726,941). Claims 1-2, 8-13, and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Connell (U.S. Patent No. 6,461,399). The rejections based on Ethington, Jr. et al. and Connell are moot, because currently amended claims 1 and 9 include all the limitations of cancelled claims 4 and 15, respectively. Applicant respectfully traverses the rejection based on EP '992.

To anticipate a claim, the reference must teach every element of the claim. *See* MPEP § 2131. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsis verbis* test, i.e.,

identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

EP '992 fails to disclose every element of the claimed invention. In particular, EP '992 fails to disclose that the fertilizer contains about 1-2.5% nitrogen and 0.35% phosphorus. EP '992 discloses manure that is "enriched with" 10-50 parts of shredded waste based on plant biomass, "30 to 60 parts of manure prepared by using 1 to 20 parts of calcium or magnesium lignosulphate, 0 to 40 parts of limestone, 0 to 20 parts of ammonium sulphate and 0 to 20 parts of phosphates" (see abstract translation). The amounts of ammonium sulphate and phosphates disclosed by EP '992 are the amounts to be added to the manure, not the final amount of the fertilizer as alleged by the examiner. Importantly, however, EP '992 discloses supplementing manure with phosphates, which is not desired in the present invention.

The present Applicant has recognized that the phosphorus content of poultry litter is too high to be used as an environmentally friendly fertilizer. Nevertheless, diluting the manure to reduce the phosphorus content also reduces the nitrogen content that is useful as a fertilizer. Applicant, however, has discovered a method to inexpensively, effectively, and significantly lower the phosphorus content of poultry litter, while maintaining the high nitrogen content of poultry litter. EP '992 augments the phosphorus level of raw manure, while the present invention lowers the phosphorus level of raw poultry litter (see page 3, second full paragraph, of the specification; and TABLE 1). By supplementing manure with phosphorus, EP '992 cannot effectively maintain a low phosphorus content of about 0.35% from raw poultry litter. Therefore, the reference does not anticipate the present invention. Accordingly, withdrawal of the rejection is respectfully requested.

## THE CLAIMS ARE NOT OBVIOUS

Claims 3-7 and 14-18 stand rejected under 35 U.S.C. §103(a) as being obvious over Kazemdeh (U.S. Patent No. 5,772,721). Claims 3-7 and 14-18 stand rejected under 35 U.S.C. §103(a) as being obvious over Connell in view of Staples (U.S. Patent No. 5,730,772, and further in view of Cook (U.S. Patent No. 2,597,457), Doughty (U.S. Patent No. 462,476) and thomas et al. (U.S. Patent No. 4,405,354).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See* MPEP 2143.

With respect to the rejection over Kazemdeh, the cited reference fails to disclose all the claim limitations. In particular, the reference fails to disclose that the fertilizer contains about 1-2.5% nitrogen and 0.35% phosphorus. In the rejection, the Examiner avers that “it would have been obvious to one of ordinary skill in the art to follow the teachings of this reference and combine the lignosulfonate binder, the lime stone, and poultry waste.” This statement is not supported by any motivation for modifying Kazemdeh to arrive at the present invention. According to MPEP 2142, “the initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done.” Further, “it is the duty of the examiner to explain why the combination of the teaching is proper ... A statement of a rejection ... must explain with reasonable specificity at least one rejection, otherwise, the examiner procedurally fails to establish a *prima facie* case of obviousness” (MPEP 2142). Here, because the Examiner

fails to provide any suggestion or motivation to arrive at the present invention, he has not met his burden to establish a *prima facie* case of obviousness.

Nevertheless, Applicant respectfully submits that there is no motivation to modify the teaching of Kazemdeh to arrive at the present invention, because Kazemdeh teaches away from the present invention. As stated above, the goal of the present invention is to retain valuable nitrogen in poultry litter, while significantly lowering the phosphorus level (see page 3, second full paragraph, of the specification; and TABLE 1). In column 7, lines 1-2, Kazemdeh teaches the desirability of increasing the phosphorus in the final fertilizer pellet. This teaching is clearly directly contrary to the goal of the present invention. By adding phosphate, a low phosphate content of about 0.35% cannot be achieved from poultry litter. Therefore, one of ordinary skill in the art, reading the disclosure of Kazemdeh, would not have modified the teaching of Kazemdeh to arrive at the present invention. Accordingly, Kazemdeh cannot render the present invention obvious.

With regard to the rejection over Connell in view of Staples, and further in view of Cook, Doughty, and Thomas et al., the references, taken alone or in combination, fail to disclose every element of the present invention. In particular, the references fail to disclose that the fertilizer contains about 0.35% phosphorus. Nevertheless, the Examiner alleges “to optimize amounts of these additives so as to obtain a final phosphorus content of about 0.35% would have been well within the realm of ordinary skill” (see page 5 of the Office Action). The Examiner’s reasoning is based on Connell’s disclosure on column 4, line 66 to column 5, line 6; however, this reasoning is erroneous. According to Connell, soil deficiencies and crop nutrient needs can be determined. However, the current inventive fertilizer having 0.35% phosphorus is not based on soil deficiencies or crop nutrient needs, but on environmental considerations. The 0.35%

phosphorus is much lower than that of the raw poultry litter. On the other hand, Connell, like Kazemdeh, teaches augmenting the phosphorus content of the fertilizer. On column 5, lines 64-67, and column 6, line 22-26, Connell teaches nutrient adjuncts that preferably contain a phosphorus source. On column 6, lines 58-60, Connell discloses that "phosphoric acid can be utilized to supplement the phosphorus content of the final product." This teaching clearly teaches away from the present invention. Therefore, one of ordinary skill in the art, reading the disclosure of the cited references, would not have any motivation to lower the phosphorus content of poultry litter to about 0.35%. Accordingly, the combination of Connell, Staples, Cook, Doughty, and Thomas et al. cannot render the present invention obvious.

Therefore, as noted above, the present invention is not obvious within the meaning of 35 U.S.C. §103. Accordingly, Applicant respectfully requests withdrawal of the rejections.

## CONCLUSION

Applicant has responded to the Office Action mailed August 26, 2005. A Petition for a one-month extension of time and fee therefor are filed herewith. All pending claims are now believed to be allowable and favorable action is respectfully requested.

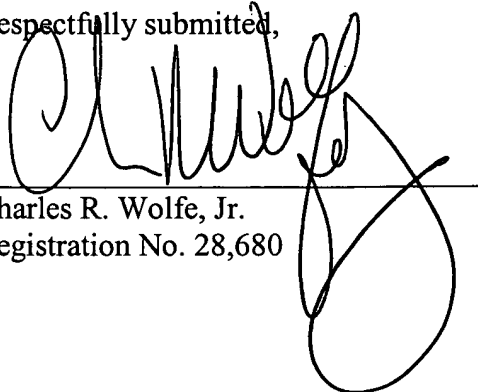
In the event that there are any questions relating to this Amendment or to the application in general, it would be appreciated if the examiner would telephone the undersigned attorney concerning such questions so that the prosecution of this application may be expedited.

Please charge any shortage or credit any overpayment of fees to BLANK ROME LLP, Deposit Account No. 23-2185 (119544-00101). In the event that a petition for an extension of time is required to be submitted herewith and in the event that a separate petition does not

accompany this response, applicant hereby petitions under 37 C.F.R. 1.136(a) for an extension of time for as many months as are required to render this submission timely.

Any fees due are authorized above.

Date: 12/23/05

Respectfully submitted,  
  
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